

SECTION 40 - INDEX

ETHICS

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SECTION 40

ETHICS

Sub-Section 40.100 - Purpose and Definitions

It is important that persons conducting public procurement avoid, not only improprieties, but the appearance of impropriety. The integrity and credibility of the procurement program requires them to be impartial, fair and free of any relationships that may cause them to be partial to any vendor or product. The information provided in this section outlines the prohibitions contained in the Virginia Public Procurement Act. Avoiding the "appearance of impropriety" often means going beyond what the law imposes.

EXAMPLE: It may not be a violation of the law to accept a meal from a vendor; however, consideration should be given to how this would appear to a competitor who might observe the event.

Many of the words used in this section of the VPPA are defined, in that Act, in a broad manner. The following definitions are of interest:

- Immediate family means "a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee".
- Official responsibility means "administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom".
- Procurement transaction means "all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration:.

- Public employee means "any person employed by a public body, including elected officials or appointed members of governing bodies".

Code of Virginia, Section 2.2-4368

Sub-Section 40.200 - Ethical Requirements

Subject 40.210 - Conflicts of Interest

A public employee is prohibited from participating in a procurement transaction if he/she (or, in some cases his/her partner or family) has an interest in the potential contractor's business. (Refer to the VPPA for the specific prohibitions involving conflict of interest.)

Possible

Circumstance: If a conflict of interest is unavoidable.

Example: A relative of the CSB employee conducting the procurement transaction owns or has interest in a business that will be competing for a contract with the CSB.

Recommendation: The CSB employee conducting the procurement transaction should turn the program over to another CSB employee and remove him/herself from any decision making related to that procurement.

Documentation: The potential conflict of interest and the steps taken to resolve the conflict should be documented for the contract file.

Code of Virginia, Section 2.2-4369

Subject 40.220 - Gifts

Code of Virginia - "No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this section."

Violation of this section may result in the removal of the vendor from the CSB Vendor's List.

Code of Virginia, Section 2.2-4371

While the Code of Virginia does not prohibit gifts of nominal or minimal value, persons who are involved in public procurement are strongly encouraged to adopt a no gifts policy.

The offer of food, drinks, or give-away items to CSB employees participating in vendor-sponsored seminars or trade shows does not constitute a violation of this law.

Subject 40.230 - Disclosure of Subsequent Employment

A public employee "having official responsibility for procurement transactions", who accepts employment with a bidder, offeror, or contractor with whom he/she has dealt in an official capacity, must provide written notice to the public employer of his/her intention to accept the employment.

Code of Virginia, Section 2.2-4370

Subject 40.240 - Kickbacks

Kickbacks involve the giving of something of value by a vendor to a CSB employee in an attempt to influence the award of a contract. Kickbacks are serious violations of the Code of Virginia.

Code of Virginia, Section 2.2-4372

Subject 40.250 - Purchase of Building Materials, etc. from Architect or Engineer

The Code of Virginia prohibits the procurement of building materials to be used in the construction of a building from the architect, engineer, or designer who designed the building unless that individual or firm has been awarded a design-build contract. Thus, a firm cannot design a structure for a CSB and afterwards, supply building materials to construct it.

Exception: A single design-build contract may be awarded in which the successful bidder or offeror will both design and build a structure. A design-build contract is primarily used for construction of small buildings or other small projects.

Code of Virginia, Section 2.2-4374

Subject 40.260 - Certification of Compliance

Employees of CSBs may be required to certify in writing that they have not violated any portion of the Ethics section of the Code.

Code of Virginia, Section 2.2-4375

Subject 40-270 - Misrepresentations

Section 11-79.2 prohibits public employees having official responsibility for procurement transactions from knowingly falsifying, concealing or misrepresenting material facts concerning a procurement.

Code of Virginia, Section 2.2-4376

Sub-Section 40.300 - Penalty for Violation

"Willful violation of any provision of (the Ethics section of the Code) shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment."

Code of Virginia, Section 2.2-4377

Sub-Section 40.400 - Code of Ethics

The Universal Public Purchasing Certification Council (UPPCC), which is the certifying council for the National Institute of Governmental Purchasing and the National Association of State Purchasing Officials, has established a Code of Ethics for public procurement professionals. Applicants for certification as a Certified Public Purchasing Officer (CPPO) or a Certified Public Professional Buyer (CPPB) must subscribe to this Code. It is highly recommended as a Code of Ethics for all persons who have “official responsibility” (See Sub-Section 40.100) for any procurement transaction.

UPPCC CODE OF ETHICS

I will seek or accept a position of employment only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of my employer.

I believe in the dignity and worth of the services rendered by my employment and the societal responsibilities assumed as a trusted public servant.

I shall be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of my employer and the public served.

I believe that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and intolerable.

I will identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.

I believe that individuals that possess UPPCC certification should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities or other things of value from suppliers which might influence or appear to influence purchasing decisions.

I will keep my governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

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I will handle all personnel matters on a merit basis. Politics, religion, ethnicity, gender and age carry no weight in personnel administration in the agency being directed or served.

I shall not seek or dispense personal favors that are in conflict with my profession. I will handle each administrative problem objectively and empathetically without discrimination.

I subscribe to and support the professional aims and objectives of the Universal Public Purchasing Certification Council.

